

The responsibility to protect, as enshrined in article 4 of the Constitutive Act of the African Union

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This paper assesses the emergence of the responsibility to protect (R2P) as an international relations norm. Following a brief discussion of the genesis of this norm, it assesses the key aspects of R2P. It then examines the Constitutive Act of the African Union (2000) to analyse the extent to which R2P is enshrined and implicated in this document. The paper also discusses the extent to which the AU has sought to implement R2P through its commitment to promote peace around the continent where there is a crisis. It concludes with a discussion of whether the AU is in fact committed to R2P.

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Genesis of the responsibility to protect

Contextualising humanitarian intervention

The 1992 *An agenda for peace*, published by the first African UN Secretary-General, Boutros Boutros-Ghali, argued for proactive peacemaking and humanitarian intervention (UN Secretary-General 1992). The report outlined suggestions for enabling intergovernmental organisations to respond quickly and effectively to threats to international peace and security in the post-Cold War era. In particular, four major areas of activity were identified: preventive diplomacy, peacemaking, peacekeeping, and post-conflict peacebuilding.

However, during the 1990s and following the end of the Cold War it was difficult to operationalise humanitarian intervention. At that time the UN was generally reluctant to issue Security Council resolutions that were perceived as infringing on the sovereignty of member states. As a consequence, violent conflict that was perpetuated primarily within states was difficult to manage. Africa was particularly affected in this decade by the conflicts in Angola, Liberia, the Democratic Republic of Congo (DRC), Sierra Leone and South Sudan, and the genocide in Rwanda. With the onset of the new millennium, intra-state violent conflict continued unabated and tragedies like the situation in the Darfur region of Sudan raised new questions about the doctrine of humanitarian intervention.

The issue of humanitarian intervention became a key challenge in international relations. During the UN General Assembly in 1999, and again in 2000, the former Secretary-General, Kofi Annan, ‘made compelling pleas to the international community to try and to find, once and for all, a new consensus on how to approach these issues, to “forge unity” around the basic questions of principle and process involved’ in humanitarian intervention (ICISS 2001:vii).

Through the leadership of the government of Canada an International Commission on Intervention and State Sovereignty (ICISS) was established to assess the issue of the right of humanitarian intervention.

Key aspects of the responsibility to protect

The responsibility to protect (R2P) comprises three specific responsibilities:

- The responsibility to prevent – addressing root causes and direct causes of internal conflict and other man-made crises that put populations at risk
- The responsibility to react – responding to situations using coercive measures like sanctions, international persecution and military intervention where necessary

- The responsibility to rebuild – providing assistance with recovery, reconstruction and reconciliation, and addressing the causes of the harm the intervention was designed to halt or avert (ICISS 2001:xi)

The African Union's accidental responsibility to protect: Article 4 of the Constitutive Act

The year 1999 marked three events: five years after the Rwandan genocide, five years after the liberation of South Africa from the yoke of apartheid, and the completion of the stated aim of the Organisation for African Unity (OAU) to liberate the African continent from colonialism.

In this year, African leaders met in Sirte, Libya, inauspiciously to review the Charter of the OAU. The meeting emphasised the importance of strengthening solidarity among African countries and reviving the spirit of Pan-Africanism. The AU project was born in Sirte in 1999, with the decision to draft an act of constitution. The AU's Constitutive Act was subsequently signed in Lomé, Togo, on 11 July 2000. The official inauguration of the AU took place in July 2002, in Durban, South Africa, and represented the next level in the evolution of the ideal of Pan-Africanism.

The chairperson of the African Union Commission, President Alpha Oumar Konaré, has been advocating the importance of moving away from a culture of non-intervention to a culture of non-indifference. The AU is learning from the lessons of the OAU and has adopted a much more interventionist stance through its legal frameworks and institutions. The AU Peace and Security Council (PSC) was established in 2004 through the Protocol Relating to the Peace and Security Council of 2002 (AU 2002:1). The AU's 15-member PSC is mandated to conduct peacemaking, peacekeeping and peacebuilding. The council has 15 member countries (ten elected for a term of two years and five for a term of three years). The chairperson of the AU is assisted by a commissioner in charge of peace and security who provides operational support to the PSC, deploys peace efforts and takes the necessary steps to prevent, manage and resolve conflicts.

The authors of the Constitutive Act of the African Union (2000) effectively enshrined a responsibility to protect in the document.

The PSC can assess a potential crisis situation, send fact-finding missions to trouble spots and authorise and legitimise AU intervention in internal crisis situations. Article 4(h) of the AU Constitutive Act affirms 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity' (AU 2000, article 4(h)). Furthermore, article 4(j) declares 'the right of Member States to request intervention from the Union

in order to restore peace and security' (AU 2000, article 4(j)). In particular, article 7(e), of the Protocol of the Peace and Security Council states that the Council can 'recommend to the Assembly of Heads of State intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments' (AU 2002:9). This is a major qualitative difference between the AU Protocol and the Charter of the OAU. With the adoption of these legal provisions, for the first time in the history of Africa, the continental organisation, working through an appointed group of states, has the authority to intervene in internal situations in any state that may lead to atrocities against minority groups or communities at risk. In other words, the AU has the right and the responsibility to protect.

To reinforce this provision the AU is working for the establishment of an African Standby Force by 2010 to cooperate, where appropriate, with the UN and subregional African organisations in conducting peace operations. In effect, the AU will continue to maintain a working relationship with the UN and other international organisations, namely the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), the Southern African Development Community (SADC), the Economic Community of Central African States (ECASS) and the Arab Maghreb Union (AMU). An early warning system (CEWS) will be established on the African continent, as well as a Panel of the Wise to assist with preventing the outbreak or escalation of conflict.

An African Standby Force (ASF) is to be established and will comprise five brigades from each of Africa's subregions: Southern, East, Central, West and North, which will effectively project the responsibility to react to atrocities as well as maintain peace. The AU's responsibility to rebuild the continent is currently being pursued through its post-conflict and reconstruction framework.

The AU, in collaboration with the NGO SaferAfrica, convened a meeting from 4 to 5 September 2005 in Durban, South Africa, which brought together the AU's PSC with the permanent representative of other AU member states (AU 2005:1). The objective of the meeting was to reflect on post-conflict reconstruction and development in Africa. The meeting discussed the experiences of and lessons learned by various organisations working in peacebuilding, post-conflict reconstruction and development. The meeting identified the key actors and the institutional set-up and coordination that will be required to generate broad agreement on operationalising the AU framework for post-conflict reconstruction and development. The meeting also proposed the establishment of an AU-managed African Development Fund whose functions would include securing the resources necessary for effective post-conflict recovery and development, and acting as a catalyst for accessing and targeting resources for the continent's peacebuilding needs.

An effective AU post-conflict strategy must focus on the disarmament, demobilisation and reintegration (DDR) of ex-combatants. This will ensure that demobilised fighters have access to rehabilitation programmes that will enable them to acquire new skills and facilitate their transition back into society. Security sector reform (SSR) is also vital to ensure that national defence and police forces re-orient their activities towards building sustainable peace in their respective countries. The meeting also noted that national institutions need to be rebuilt to consolidate democratic governance, rule of law, and the protection of the human rights in transitional societies. Education and training must be provided to guarantee the sustainability of these institutions, and to establish professionalism and integrity.

Having a principle enshrined in the Constitutive Act and making sure that countries live up to it are two entirely different things. The AU had effectively declared its adherence to R2P even before the term was popularised by the UN General Assembly. Although couched in different terms, the same outcome is sought, namely the ability to protect citizens in Africa from human rights atrocities.

To R2P or not to R2P? Questioning the prospects of transforming theory into practice

The question arises whether recent AU efforts in Burundi, Darfur and Somali represent an attempt by the AU to implement its R2P. R2P is not merely a recipe for military adventurism; it should be the blueprint for securing Africa's future and the stability and prosperity of the continent's citizens.

Operationalising R2P through the African Union: The case of Burundi

The AU intervened in Burundi to build peace and enable the establishment of a more robust UN peace operation. The AU's 2003 peace operation in Burundi, also known as the African Union Mission in Burundi (AMIB), was the first AU operation wholly initiated, planned and executed by its members. In this regard, it represents a milestone for the AU in terms of self-reliance in operationalising and implementing peacebuilding. In Burundi, the AU was effectively mandated to build peace in a fluid and dynamic situation that could easily have led the country to relapse into violent conflict. In this regard, this AU mission had elements of R2P.

One of the tasks of the AU force was to protect returning politicians who would take part in the transitional government. Other peacebuilding tasks included opening secure demobilisation centres and improving AMIB's ability to reintegrate former militia back into society. The demobilisation centres supervised the DDR process, which, as noted

earlier, is a fundamental pillar of peacebuilding. AMIB was also involved in creating conditions that would allow internally displaced persons and refugees, based in the eight Burundian provinces and three refugee camps in Tanzania, to return to their homes. This was very much in keeping with the AU and Nepad (New Partnership for Africa's Development) policy frameworks that were subsequently developed.

AMIB also had to create the conditions that would allow a UN peace operation to enter into the country. The UN was reluctant to enter a situation where there was potential for a relapse into conflict. AMIB's role in this case was a vital and crucial one in creating conditions through which peace, albeit a fragile one, could be built in Burundi. By the end of its mission AMIB had succeeded in establishing relative peace to most provinces in the country. Throughout its period of operation AMIB succeeded in de-escalating a potentially volatile situation and in February 2004 a UN evaluation team concluded that conditions were appropriate for establishing a UN peacekeeping operation in the country.

The limits of R2P in Darfur

The AU is also involved in promoting peace in the Darfur region of Sudan through its African Union Mission in Sudan (AMIS). In February 2003 the Darfur region (situated in western Sudan on the border with Chad) was afflicted by violent conflict between the Sudanese government and pro-government militia referred to as the Janjaweed and two rebel movements, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) (Mans 2005). The conflict resulted in widespread atrocities against civilians and displaced populations. Neighbouring Chad at one point hosted close to 110 000 refugees from Darfur. On 8 April 2004 a ceasefire, brokered with the assistance of the AU, came into effect for a period of 45 days in order to enable humanitarian aid to reach the affected populations (IRIN 2004). Throughout, the Chadian mediation team, which initiated talks on a political solution to the conflict in N'djamena, had been working closely with the AU. The AU was subsequently charged with establishing and financing a ceasefire verification commission. The ability of the AU to achieve its mission in Darfur will depend on its capacity to mobilise the political will of its member states.

The AU has a rather weak mandate in Darfur, namely to monitor the humanitarian crisis in the region effectively and to coordinate efforts to advance the cause of peace. However, this narrow mandate does not provide the AU with the leeway to implement peacebuilding initiatives, nor does the organisation have the wherewithal to finance comprehensive peacebuilding operations.

The regional or continental perspective under the leadership of the AU seeks to find a political solution while undertaking peace operations to alleviate the suffering of the

Darfurians. The AU's monitoring mission leaves much to be desired; a more robust peacekeeping force is required to dissuade the silent genocide that is taking place in Darfur. However, the AU's peacemaking initiative in Abuja, Nigeria, under the tutelage of a former Secretary-General of the OAU, Dr Salim Ahmed Salim, led to the signing of the Darfur Peace Agreement (DPA) in May 2006. The fact that only the Minni Minnawi faction of the SLA signed the agreement means that the DPA was by no means a comprehensive peace agreement in the mould of the South Sudan agreement. The conflict is not over, nor is there a durable ceasefire. The armed resistance groups have even begun to fight each other, and the situation has deteriorated into a military, political and diplomatic conundrum.

In Darfur, the AU found itself with a test case that it was ill-equipped and under-resourced to resolve. The politicisation of the situation in Darfur means that there are now no easy answers. Certainly, it is right and proper for the AU to be in Darfur, or for some form of international peace operation to be staged there. Regrettably, while the AU's peacemaking efforts are to be applauded, its monitoring peace operation is floundering and enabling government forces, the Janjaweed, and armed resistance groups to continue fighting amongst themselves and continue the carnage and destruction of the lives and property of Darfurians.

On 31 August 2006 the UN passed Security Council Resolution 1706, which called for the deployment of a UN peace operation in Sudan on 1 October 2006. It also stated that the UN Mission in Sudan (UNMIS) would take over from AMIS the responsibility for implementing the Darfur Peace Agreement upon the expiry of AMIS's mandate and at the very latest by 31 December 2006.

The Sudanese government is still cautious about the inclusion of non-African troops in a potential peacekeeping operation in Darfur. This is due to the fact that there are strong sentiments particularly with the political elite in Khartoum such an attempt to deploy non-African troops might represent an attempt to re-colonise Sudan.

A misconceived R2P in Somalia?

The AU has launched an operation in Somalia, ostensibly to stabilise the ongoing dispute between groups in the country. Following a report of the chairperson of the Commission on the Situation in Somalia (PSC/PR/2(LXIX)) and the evaluation and recommendations of the AU Military Staff Committee, the AU Peace and Security Council decided to authorise the deployment of the AU Mission in Somalia (AMISOM) 'for a period of 6 months, starting from the date of this decision', with the following mandate:

- To provide support for the TFIs (Transitional Federal Institutions) in their efforts towards stabilisation of the situation in the country and the furtherance of dialogue and reconciliation To facilitate the provision of humanitarian assistance

- To create conditions conducive to long-term stabilisation, reconstruction and development in Somalia

On 20 February 2007 the UN Security Council adopted SC Resolution 1744, which authorised AMISOM's deployment. The UN is supporting AMISOM through an assistance cell to the AU in Addis Ababa and providing military planners. The UN Security Council met with the AU Peace and Security Council on 16 June 2007 and discussed the modalities for deeper collaboration. In particular, both bodies discussed the importance of stabilising Somalia.

AMISOM was launched in March 2007 with 1 700 Ugandan troops. Nigeria, Ghana, Malawi and Burundi have also pledged to deploy troops. The PSC decision indicated that 'the concept of logistic support for AMISOM shall be based on the model of the African Union Mission in Burundi (AMIB)' (AU 2007, paragraph 9). This effectively means that 'the AU Commission shall mobilize logistical support for the TCC's, as well as, funding from AU member states and partners to ensure that TCC's are reimbursed for the costs incurred in the course of their deployment, based on AU practice' (AU 2007, paragraph 9).

AMISOM is trying to stabilise parts of Mogadishu and Baidoa in which it is operating. It has a role to play in creating the security conditions to enable the complete withdrawal of Ethiopian troops from Somalia. AMISOM is also supporting dialogue and reconciliation. The difficulty is that currently there is no peace to keep in Somalia and the AU may find itself drawn into a peace enforcement role. This may therefore turn into a case of a misconceived responsibility to protect in Somalia.

International collaboration on R2P

UN Security Council Resolution 1706 (UNSC 2006) requested 'the Secretary-General to take the necessary steps to strengthen AMIS through the use of existing and additional United Nations resources with a view to transition to a United Nations operation in Darfur'. The focus is now on the emergence of a 'hybrid UN-AU force' or a 'hybrid partnership' with the AU, particularly with reference to peacekeeping in Darfur. On 31 July 2007, the UN Security Council Resolution 1769 (UNSC 2007) established the AU/UN Hybrid Operation in Darfur, also referred to as UNAMID. There are efforts to reassure observers that this is not an effort to re-establish the asymmetrical relationship which prevailed in the early decades of the UN, but rather an effort to create something new – a hybrid partnership. The UN Department of Peacekeeping Operations (DPKO) is supporting AMIS through its UN Assistance Cell in Addis Ababa, Ethiopia, where the AU headquarters are situated. More specifically, DPKO and the AU's Peace Support Operations Division have signed an agreement to develop a joint action plan. In July

2006, the UN created a dedicated integrated capacity to oversee the implementation of this action plan. This integrated capacity will involve the 'collocation' of UN staff within the AU Commission in Addis Ababa.

Chapter VIII of the UN Charter is not explicit on the possibility of establishing such a hybrid partnership, therefore there is significant leeway to operationalise such a relationship provided that both the UN and the regional organisation are compliant. Article 52 in fact states that 'the Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council' (UN 1945, article 52). There is thus a legal basis for embedding UN staff within the AU.

In terms of the responsibility to rebuild, there is still no formal relationship between the UN Peacebuilding Commission and the AU framework for post-conflict reconstruction and development (PCRD). This is particularly pertinent because the UN Peacebuilding Commission is currently considering the cases of two African countries: Burundi and Sierra Leone. There needs to be greater collaboration between the UN Peacebuilding Commission and the AU PCRD framework. In particular, the Peacebuilding Commission and the AU need to develop a *symbiotic partnership* predicated on complementation. Such a relationship is necessary in order to avoid the duplication or replication of functions and, strategically, to target the disbursement of mobilised resources.

Is the African Union committed to R2P?

The chairperson of the AU, former president Alpha Oumar Konaré has questioned whether the AU mission in Darfur is adequate for policing a region covering the expanse of other medium-sized African countries. The AU force also did not have the mandate to prevent attacks but they could play a preventive role by their presence. Konaré has periodically requested the Sudanese government to make every effort to halt the bombing that was taking place and asked the militia to desist from military action. It was symbolic in terms of the AU's initiating and implementing its commitment to promoting peace and protecting civilians across the continent. The AU is committed to responding to similar situations in the future, evident in the establishment of an AU Mission in Somalia (AMISOM) in March 2007.

Of course much pain and suffering would be prevented if the AU enhanced and strengthened its mechanism for preventive diplomacy and early response to potential conflicts before they escalate. In this respect, the former chairman of the AU Assembly of Heads of State and Government, President Olesgun Obasanjo, stated that this was an attempt to demonstrate the AU's determination to be proactive and prevent violence and protect lives and property.

Financing R2P

The AU's weak mandates may lead to its ultimately not succeeding in implementing R2P, but there is also the question of how to finance R2P. The AU remains spectacularly under-resourced, which is squarely the responsibility of African governments and not of donors. Tax revenue from African citizens is used to finance huge domestic defence budgets, but the commitment to Pan-African security does not approximate the commitment shown to national defence. This is a natural consequence of the overemphasis of state sovereignty and the illusion that one can secure one's security without adequate concern for the security of others. The converse of course is true in Africa (as elsewhere): the security of a nation-state or a community is intricately bound to the security of its neighbours. Therefore, there has to be a greater commitment from African governments to finance R2P.

Abuse of R2P

Some countries have misappropriated the term R2P and used it to justify military confrontation with non-state actors. Some have gone so far as to use R2P to justify the invasion and occupation of other countries. UN member states signed the 2005 World Summit Outcome Document that effectively legitimised R2P as an international doctrine. However, because of the propensity towards military adventurism, regime change, and bringing or exporting freedom and democracy by force, vigilance is required when implementing R2P.

The importance of raising awareness of R2P

It is vital to raise the global awareness of R2P. Since citizens often feel disempowered or even powerless in the face of repression, an awareness of the existence of R2P as a doctrine that speaks direct to their plight is necessary. Awareness should be raised by means of training workshops, policy development seminars, and civic education programmes at primary, secondary and tertiary levels.

Conclusion

Ultimately, it is possible to make the case that the AU is committed to R2P. The AU has taken an active, interventionist stance with regard to conflict situations in Burundi, Darfur and Somalia and is actively involved in supporting other peace operations on the continent. Given the youthfulness of its institutions, the AU, even though it has made a significant effort to conduct peace operations, it is far from being able to operationalise

an effective R2P regime. The limitations of its fledgling institutions have been exposed in for example the complex humanitarian situation in the Darfur region of Sudan. Ultimately, it is too early to pass a definitive judgement on the AU's commitment to R2P, since the paradigm shift in attitude that the AU is attempting to bring about and the institutions that it has developed to do so have to be given an opportunity to work. The AU will need to reorient political leadership on the continent and take decisive and necessary action, without which the challenges surrounding the implementation of R2P will not be met.

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